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SUBJ: MALAWI LAUNCHES CONSTITUTIONAL REVIEW

**¶1.** (U) Summary: On March 28 President Bingu wa Mutharika opened Malawi's first Constitutional Review since the advent of multiparty democracy in 1994. The 6-month review aims to conduct a comprehensive examination of constitutional problems that have arisen during the country's first decade of democracy. Over 250 delegates will take part in the conference, which will address issues such as the role of the vice-president, the separation of powers, presidential age limits, and local government elections. End Summary

**¶2.** (U) Opening the conference, Mutharika highlighted changes to the "floor-crossing" law and local government elections as two issues which he would like to see addressed. Taking a pot-shot at European donors (principally Germany and Norway, who have pushed the hardest for the long-delayed local elections), Mutharika said "outsiders are dictating what is done with local government elections," and instead "we Malwians" should decide. He also called for the conference delegates to address the separation of powers, and the mandate of the judiciary to interpret the constitution. The president noted that Malawi has amended its constitution some 100 times since 1994, and exhorted delegates to propose modifications that would make amending the constitution a rarer occurrence.

**¶3.** (U) Poloffs met with Justice Elton Singini, Commissioner of the Malawi Law Commission, on March 14 to discuss the review process. Singini said the impetus for a review dates back over two years, to when former vice-president Justin Malewezi resigned from his party but maintained his position, sparking a constitutional crisis in the waning months of the Muluzi administration. The Law Commission has since convinced current president Bingu wa Mutharika to support the review, with the understanding that it will serve as a wider, all-encompassing process.

**¶4.** (U) Singini singled out the recall provision, the hiring/firing of vice-presidents, crossing the floor in parliament, and presidential voting structures as some issues that will garner the most attention in the review process.

**¶5.** (U) After the initial conference, the Law Commission will form a panel of experts to come up with proposed changes to the constitution. They will then hold a second conference in August to review the proposed changes.

**¶6.** (SBU) Following this second conference, the Law Commission will present the proposals to both Parliament and the Cabinet. Government must then take the changes to the floor of Parliament for passage. Government is under no obligation to take all of the Law Commissions proposals, and Singini in fact expects them to discard a few.

¶7. (U) Most changes to constitution would then have to be passed by a 2/3 majority in Parliament. However, some sections of the constitution require a general referendum to change them, something that Singini said he hopes to avoid (primarily due to cost).

¶8. (SBU) Comment: As reported previously (reftel), the entire review process could well be hijacked by political issues of the day. Mutharika, while calling for Malawians to put aside "old grudges", brought up one of the most controversial issues (the floor-crossing provision) in his opening speech, drawing both boos and cheers from the crowd. (Note: If the floor-crossing provision is left in the constitution, and the courts allow Parliament to enforce it, Mutharika could lose up to half of his party's seats in Parliament.)

¶9. (SBU) For his part, Singini himself seems to understand the challenges the commission faces in effecting real change. And as one of the framers of the current constitution, he is in a good place to appreciate the pitfalls and hurdles of this review process. End Comment.

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